DELAY IN PACKERS' CASE

Judge Grants 24 Hours for Counsel to Answer Affidavits.

EITHER SIDE WILL APPEAL

Government Contends That the Packers' Petition Was Not in Good Faith.

Chicago, Nov. 16.—Pitting a question of fact against a question of law and advocating the cause of public welfare against an allegation of selfish, pecuniary motives, lawyers for the indicted Chicago packers to-day fought government counsel in an effort to obtain a final ruling on the criminal clause of the Sherman anti-trust act from the United States Supreme Court, before the packers shall go to trial.

The courtroom of United States Circuit Judge C. C. Kohlsaat was the battleground for the clashing forces of legal wit and experience. When the court day ended both sides claimed the advantage. The arguments will be resumed to-morrow morning.

The question of fact advanced by counsel for the packers was to the effect that the defendants really had been under restraint for one hour last Monday, after they had been surrendered by their bondsmen, and were, therefore, subject to the operation of the habeas corpus law.

Against this, lawyers for the government declared that as a question of law the packers had no right to use the habeas corpus writ because their method of surrender was illegal, and therefore, legally, they were not under restraint.

After they had threshed out these knotty points, the lawyers proceeded to portray two widely different purposes, which they said actuated the packers in making their petition for the writ of habeas corpus. Levy Mayer, of counsel for the indicted men, declared that the welfare of business in all lines the country over demanded the earliest possible ruling from the United States Supreme Court upon the validity of the criminal clause of the Sherman anti-trust act.

"Not since the free silver agitation," said Mr. Mayer, "has the business of the country suffered to such a degree from any one thing as it has from the uncertainty surrounding the construction of the criminal clause of the Sherman act."

James Sheean, of special counsel for the government, said the purpose behind the petition of the packers was to avoid, if possible, the expense of trial until the constitutionality of the criminal section of the Sherman act finally had been determined.

Decision Expected To-day.

A decision in the appeal is expected to-morrow. Judge Kohlsaat granted a twenty-four-hour delay for counsel for the packers to answer affidavits filed by the government attorneys.

In the meantime, arguments were presented by attorneys for the government urging that writs issued November 14 be quashed and the government allowed to proceed with its trial, set for next Monday, on indictments charging violation of the Sherman anti-trust law.

In any event, it is not believed the trials of the packers will begin on Monday. In case Judge Kohlsaat sustains the government's contention that the packers' petition was not in good faith, and quashes the writ, the indicted men have announced they will appeal to the Supreme Court and thus obtain a ruling on the constitutionality of the criminal sections of the Sherman law. This, according to counsel, will have the effect of preventing trial on the indictments until the ruling.

Should Judge Kohlsaat grant the writs, the government will appeal to the Supreme Court.

The chief contentions of the government were that the packers had not acted in good faith in applying to the Circuit Court, and that the Circuit Court was without jurisdiction.

The motion to quash was asked for the following reasons:

First, that the Circuit Court was without jurisdiction to enter the writs.

Second, that the petitioners were not imprisoned or restrained at the time of filing the petition.

Third, that the leave to file a petition was granted in ignorance of the essential facts bearing upon the propriety of entertaining such a petition.

Fourth, that the petition was not in good faith, but was for the purpose of avoiding trial on the issues of the indictments.

Fifth, that the petitioners were not arrested, but the pretended imprisonment was at their own instance to give ground for allegations of the petitions.

Sixth, that the petitioners have imposed on the court by making it appear that the purpose of their act is to obtain a decision on the validity of the Sherman act, whereas the true purpose is to transfer the custody of the petitioners from the District Court so as to prevent trial upon indictment.

Seventh, each of the petitioners has pleaded "not guilty" to the indictments and is not entitled to have any questions decided by other than the District Court until a judgment has been obtained against him upon a verdict finding him guilty.

NEW RULE FOR INCORPORATION.

Albany, Nov. 16.—Under the provisions of an act passed this year, the Secretary of State, after January 1 next, will not be required to receive a certificate of a proposed corporation, other than a religious, charitable or benevolent corporation, which does not clearly indicate that it is a corporation as distinguished from a person, firm or copartnership, according to an opinion by Attorney General Carmody.

ROMANCE IN A BOOK SHOP

How Girl Found a Husband Through Misfortunes.

One doesn't expect to find much romance around a second hand book store, except the romantic adventures of bibliomaniacs in discovering first editions. Occasionally, though, some little drama has its setting in one of those dimly lighted, musty smelling old places one sees occasionally in some of the less frequented streets of the loop.

Instead of the glittering lights and the orchestra, however, there is only a stoop shouldered, spectacled old man for a stage manager, the dusty volumes for spectators and the murmur of the traffic of the city to furnish "slow music."

"We have our little bits of comedy and tragedy, too, sometimes," said the proprietor of one old book shop quoted by "The Chicago Daily News." "Did you notice that man who just went out a moment ago? Yes? Well, I may say I have succeeded in getting him happily married and to a mighty nice girl, too. It was simple.

"That fellow was a confirmed bachelor. He had been coming in here for a number of years, and I got to know him quite well. I used to twit him about his bachelorhood occasionally, but he was one of these shy, methodical men, and his rooms over north seemed home enough for him until last spring.

"I purchased part of a library last winter from the widow of a man once prominent in the business and social affairs of Chicago. The family had fallen into reduced circumstances and they at last were forced to sell the books. The daughter, a young woman in her early twenties, conducted the negotiations, and the books were delivered to me. It was not long after that my friend dropped in, and I called his attention to my recent purchase. He picked out a little volume of poems from the Italian and took it home with him. He had scarcely left the shop when the young woman came in. It seems there was some sentimental value attached to the volume I had just sold and that it had by accident been included in the lot I had purchased. She wanted to know if I could get it back for her.

"It sounds a little like a novel, but the negotiations between myself and my bachelor customer and the young woman brought about their acquaintance. I wrote him a note explaining the situation and asking him if he would return the book. He brought it back the next morning and the young woman dropped in at the same time to see what I had done about it. I introduced them, and the girl's confusion over having marked several passages in the volume and his confusion in admitting his having read those passages with considerable interest was pretty to see.

"To cut a long story short they found occasion to meet here once or twice a week after that and look over books in which they were both interested, and I was not particularly surprised last June to receive an invitation to the wedding."

"What kind of a present did you send?" was asked.

"I was fortunate," answered the proprietor. "There was an edition of Montaigne's essays they had been looking for and about a week before the wedding it came in with some books from the library of an old man on the West Side. It was in two volumes, one each, and I sent it to them."

ROOSEVELT ON TRUSTS

Continued from first page.

whatever their constituents wished them to think, crafty reactionaries who wished to see on the statute books laws which they believed unenforceable, and the almost solid "Wall Street crowd," or representatives of "big business," who at that time opposed with equal violence both wise and necessary and unwise and improper regulation of business—all fought against the adoption of a sane, effective and far-reaching policy.

The Control of the Trusts.

It is a vitally necessary thing to have the persons in control of big trusts of the character of the Standard Oil Trust and Tobacco Trust taught that they are under the law, just as it was a necessary thing to have the Sugar Trust taught the same lesson in drastic fashion by Henry L. Stimson when he was United States District Attorney in the city of New York. But to attempt to meet the whole problem not by administrative governmental action but by a succession of lawsuits is hopeless from the standpoint of working out a permanently satisfactory solution. Moreover, the results sought to be achieved are achieved only in extremely insufficient and fragmentary measure by breaking up all big corporations, whether they have behaved well or ill, into a number of little corporations which it is perfectly certain will be largely, and perhaps altogether, under the same control. Such action is harsh and mischievous if the corporation is guilty of nothing except its size; and where, as in the case of the Standard Oil, and especially the Tobacco, trusts, the corporation has been guilty of immoral and anti-social practices, there is need for far more drastic and thoroughgoing action than any that has been taken under the recent decree of the Supreme Court.

Of the statements of the Tobacco case in the Circuit Court, the ex-President asserts that "it practically leaves all of the companies still substantially under the control of the twenty-nine original defendants. Then he says:

Such result is lamentable from the standpoint of justice. The decision of the Circuit Court, if allowed to stand, means that the Tobacco Trust has merely been obliged to change its clothes, that none of the real offenders have received any real punishment, while, as "The New York Times," a pro-trust paper, says, the tobacco concerns, in their new clothes, are in positions of "ease and luxury," and "immune from prosecution under the law."

"A Miscarriage of Justice."

Surely, miscarriage of justice is not too strong a term to apply to such a result when considered in connection with what the Supreme Court said of this trust. That great court in its decision used language which, in spite of its habitual and severe self-restraint in stigmatizing wrongdoing, yet unhesitatingly condemns the Tobacco Trust for moral turpitude, saying that the case shows an "everpresent manifestation . . . of conscious wrongdoing" by the trust, whose history is "replete with the doing of acts which it was the obvious purpose of the statute to forbid, . . . demonstrative of the existence from the beginning of a purpose to acquire dominion and control of the tobacco trade not by the mere exertion of the ordinary right to contract and to trade but by methods devised in order to monopolize the trade by driving competitors out of business, which were ruthlessly carried out upon the assumption that the work upon the fears or play upon the cupidity of competitors would make success possible."

The letters from and to various officials of the trust, which were put in evidence, show a literally astounding and horrifying indulgence by the trust in wicked and depraved business methods—such as the "endeavor to cause a strike in their (a rival business firm's) factory," or the "shutting off the market" of an independent tobacco firm by "taking the necessary steps to give them a warm reception," or forcing importers into a price agreement by causing and continuing "a demoralization of the business for such length of time as may be deemed desirable" (I quote from the letters).

A trust guilty of such conduct should be absolutely disbanded, and the only way to prevent the repetition of such conduct is by strict government supervision, and not merely by lawsuits.

The anti-trust law, Mr. Roosevelt asserts, cannot meet the whole situation, nor can any modification of the anti-trust law avail to meet the whole situation. He continues:

The anti-trust law cannot meet the whole situation, nor can any modification of the principle of the anti-trust law avail to meet the whole situation. The fact is that many of the men who have called themselves Progressives, and who certainly believe that they are Progressives, represent in reality in this matter not progress at all but a kind of sincere rural toryism.

The effort to restore competition as it was sixty years ago, and to trust for justice solely to this proposed restoration of competition, is just as foolish as if we should go back to the flintlocks of Washington's Continentals as a substitute for modern weapons of precision. The effort to prohibit all combinations, good or bad, is bound to fail, and ought to fail; when made, it merely means that some of the worst combinations are not checked and that honest business is checked.

"Not to Strangle Business."

Our purpose should be not to strangle business as an incident of strangling combinations but to regulate big corporations in thoroughgoing and effective fashion, so as to help legitimate business as an incident to thoroughly and completely safeguarding the interests of the people as a whole. Against all such increase of government regulation the argument is raised that it would amount to a form of socialism. This argument is familiar; it is precisely the same as that which was raised against the creation of the Interstate Commerce Commission and of all the different utilities commissions in the different states, as I myself saw, thirty years ago, when I was a legislator at Albany and these questions came up in connection with our state government.

"It is contended that in these recent decisions," Mr. Roosevelt says, "the Supreme Court legislated." "So it did," he asserts; "and it had to because Congress had signally failed to do its duty by legislating." To this he adds:

For the Supreme Court to nullify an act of the Legislature as unconstitutional except on the clearest grounds is usurpation; to interpret such an act in an obviously wrong sense is usurpation; but where the legislative body persistently leaves open a field which it is absolutely imperative, from the public standpoint, to fill, then no possible blame attaches to the official or officials who step in because they have to, and who then do the needed work in the interest of the people.

The blame in such cases lies with the body which has been derelict, and not with the body which reluctantly makes good the dereliction.

In closing his editorial, the ex-President gives his views as to the means by which governmental control of the great corporations may be exercised. He says:

To sum up, then. It is practically impossible, and, if possible, it would be mischievous and undesirable to try to break up all combinations merely because they are large and successful, and to put the business of the country back into the middle of the eighteenth century conditions of intense and unregulated competition between small and weak business concerns.

"Well Meaning Toryism."

Such an effort represents not progressiveness but an unintelligent though doubtless entirely well-meaning toryism. Moreover, the effort to administer a law merely by lawsuits and court decisions is bound to end in signal failure, and meanwhile to be attended with delays and uncertainties, and to put a premium upon legal sharp practice. Such an effort does not adequately punish the guilty, and yet works great harm to the innocent. Moreover, it entirely fails to give the publicity which is one of the best by-products of the system of control by administrative officials—publicity which is not only good in itself, but furnishes the data for whatever further action may be necessary.

We need to formulate immediately and definitely a policy which, in dealing with big corporations that behave themselves and which contain no menace save what is necessarily potential in any corporation which is of great size and very well managed, shall aim not at their destruction but at their regulation and supervision, so that the government shall control them in such fashion as amply to safeguard the interests of the whole public, including producers, consumers and wageworkers.

This control should, if necessary, be pushed in extreme cases to the point of exercising control over monopoly prices, as rates on railways are now controlled; although this is not a power that should be used when it is possible to avoid it. The law should be clear, unambiguous, certain, so that honest men may not and that unwittingly they have violated it.

In short, our aim should be not to destroy but effectively and in thoroughgoing fashion to regulate and control, in the public interest, the great instrumentalities of modern business, which it is destructive of the general welfare of the community to destroy, and which nevertheless it is vitally necessary to that general welfare to regulate and control.

Competition will remain as a very important factor when once we have destroyed the unfair business methods, the criminal interference with the rights of others which alone enabled certain swollen combinations to crush out their competitors—and, incidentally, the "conservatives" will do well to remember that these unfair and iniquitous methods by great masters of corporate capital have done more to cause popular discontent with the propertied classes than all the orations of all the socialist orators in the country put together.

JOHN ZELLER CONVICTED

Former Sheriff of Hudson County Found Guilty of Grafting.

John Zeller, former Sheriff of Hudson County, and the "boss" of Guttenburg in the palmy days of racing, was convicted last night on an indictment charging conspiracy to defraud the county. Robert Meincke, who was indicted with him, was acquitted.

Zeller gave $1,000 bail to appear for sentence on November 25. The minimum penalty is eighteen months' imprisonment and the maximum three years and $1,000 fine. The conviction made a profound impression on half a dozen men recently indicted for similar offences and who were in the courtroom when the verdict was brought in.

The indictment accused Zeller, Weincke, Joseph O'Donnell and August Metzinger with carrying out a corrupt agreement to defraud Hudson County by the appointment of Metzinger as a clerk of the Hudson County Board of Elections, of which Zeller has been for years the chairman. Undisputed facts proved were the appointment of Metzinger as a clerk of the elections board in August, 1909, and that the county paid $520 for Metzinger's services as elections board clerk in August, September, October and November, 1909. He was credited with twenty-six days in each of these months, 104 days in all, at $5 a day.

Metzinger and O'Donnell were witnesses for the state. The indictments against them will be disposed of separately. Metzinger testified that he did no work as clerk of the elections board, had never seen the board's office and didn't know where it was. O'Donnell, who is the secretary of the elections board, thought Metzinger looked familiar, but could not positively recall ever having seen Metzinger at the elections board office. Zeller testified that he introduced Metzinger at the elections board office as a man he had appointed as clerk of the board. "Metzinger asked me to keep his money," testified Zeller, "and to take charge of his pay warrants and bank his money, as he was about to get married and wanted to save money."

TAKES UP NATIONAL HEALTH

Dr. Ewing Urges Immedite Establishment of Bureau.

In the annual address of the anniversary meeting of the New York Academy of Medicine last night Dr. James Ewing, professor of pathology and research at Cornell Medical College, took occasion to criticise President Taft because he held a public hearing on the bill to establish a national department of health.

Dr. Ewing complained bitterly throughout his address that the American public generally was out of sympathy with the medical profession. Of that attitude he thought the most conspicuous indication was in connection with the recently proposed bill to establish a national department of health.

"The national government," said he, "has at last awakened to the necessity of a national bureau of health, such as has long existed in other civilized countries. Yet, instead of going ahead with it, we have the astonishing spectacle of the President of the United States holding a public hearing to debate the question."

The public's distrust of the medical profession, said Dr. Ewing, showed plainly also in its support of all manner of medical cults. "It shows, too," he continued, "in the wide extension of the Christian Science movement, and in the wavering front of legislatures, which no longer stand as a firm defence of the public health against the irregular and incompetent practitioners of medicine.

"Finally, public sentiment still permits the Health Commissioner of the State of New York to be replaced every few years, according to the rules of political patronage, and with Asiatic cholera at our doors we have just witnessed the distinguished health officer of the Port of New York subjected to a mock investigation by a legal adventurer and a medically uninformed jurist."

HIST! BEER KEGS IN ARMORY

Steward of 7th Regiment Haled to Court, but Is Discharged.

William Prince, steward of the 7th Regiment Armory, was arraigned in the Yorkville court yesterday morning, charged with violating Section 1,185 of the Penal Code, which makes it a misdemeanor to "introduce wines, spiritous liquors or malt beverages into any armory or arsenal, unless prescribed for medicinal purposes."

The charge was made by Detective John Shields, who said that late at night on October 24 he saw two beer kegs delivered at the armory, and later saw Prince's signature in the driver's receipt book. George Gordon Battle, who is a member of the 7th Regiment, appeared as counsel for Prince. Mr. Battle asked Shields if he knew what was in the kegs.

"No," said Shields.

"Discharged," said Magistrate Breen.

And Mr. Battle and several other members of the regiment who were in court smiled and departed.

NEW CURBS FOR TRUSTS

Senate Hears Scheme to Permit Small Combinations.

COMMISSION RULE URGED

Another Plan Would Have Gigantic Corporations Controlled by Tax on Capital.

Washington, Nov. 16.—The Senate Committee on Interstate Commerce, which is inquiring into the trust problem, received to-day the first concrete suggestions for new legislation designed to control gigantic combinations without hampering legitimate business organizations.

Zachariah T. Vinson, of Huntington, W. Va., suggested the organization of separate federal commissions to deal with the coal, steel, lumber and oil industries, with power to authorize small combinations and agreements for selling their products or operating the properties.

A method of trust regulation through a graduated tax on the capital stock of corporations was suggested by W. S. Dwinnel, an attorney of Minneapolis. Mr. Dwinnel said such a tax, increasing in proportion to the amount of capital, would prevent monopoly and stimulate competition from smaller concerns that would not be hampered by the heavy tax.

The Senate committee pursued a course of questioning that indicated a desire to find out whether any of the men who appeared to-day favored government control of prices. Mr. Vinson said his scheme for a federal coal mine commission did not contemplate control of prices. Natural competition would be stimulated, he said, if the small coal mine operators were permitted to make reasonable combinations in order to reduce expenses and market their coal more cheaply.

Mr. Dwinnel, who proposed the federal tax on capital stock, declared the big combinations would not be able to pass this tax on to the consumer, because an increase in price would bring into operation at once many small concerns that would not be embarrassed by the big tax.

"If every prayer of the government against the United States Steel Corporation is granted," said Mr. Dwinnel, "I do not anticipate that the price of steel rails will decline from $28 a ton, even though it cost but $18 a ton to make them, as has been publicly stated. An adequate tax on big capital stock would force moderate prices or invite outside competition."

Samuel Untermyer, of New York, who prepared for the Civic Federation a report upon needed trust legislation, has been invited to appear before the committee Saturday.